

Madelia, Watonwan county, for school purposes, to be organized by county commissioners under the general law of this State.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved March 5, 1877.

CHAPTER 123.

AN ACT TO AUTHORIZE THE CITY OF SHAKOPEE TO LEVY ASSESSMENTS TO PAY HER RIGHT OF WAY AND DAMAGES CAUSED BY LAYING OUT NEW STREETS, AND FOR LOCAL IMPROVEMENTS UPON THE PROPERTY FRONTING UPON SUCH NEW STREETS AND IMPROVEMENTS, OR WHICH IS BENEFITTED THEREBY, WITHOUT REGARD TO CASH VALUATION, BEING AN AMENDMENT TO THE CHARTER OF SAID CITY.

Be it enacted by the Legislature of the State of Minnesota :

SECTION 1. That chapter six (6) of an act entitled "An act to reduce the law incorporating the city of Shakopee, in the county of Scott, and State of Minnesota, and the several acts amendatory thereof, into one act, and to amend the same," approved March nine (9), one thousand eight hundred and seventy-five (1875), being chapter six (6) of the Special Laws of the year A. D. one thousand eight hundred and seventy-five (1875), be amended so as to read as follows :

SEC. 2. The municipal corporation of the city of Shakopee is hereby authorized to levy assessments to pay for laying out new streets and alleys and damages caused thereby, and for local improvements upon the property fronting upon such new streets and alleys and improvements, or upon the property to be benefitted by such new streets and alleys and improvements, without regard to cash valuation.

SEC. 3. The common council of said city shall have the care, supervision and control of all the highways, bridges, streets, alleys, levees, public squares and grounds within the limits of the city ; and shall have power to build and keep in repair bridges, lay out, open, alter and vacate public squares, highways, streets, lanes and alleys, and widen or straighten the same, and to take grounds for the site of public buildings, subject to the assessment of damages, as hereinafter provided. That no right, title, or interest in or to any street, levee, park, public ground or square in said city shall be granted, conveyed, released or discharged by the common coun-

cil of said city, unless the same shall be submitted to a vote of the legal voters of said city, and receive a majority of said voters present and voting at an annual or special election in said city, and at which election notice of the object of said election shall be given as hereinbefore prescribed.

SEC. 4. The said city council shall be *ex officio* fence viewers within the limits of said city, and shall have the same power and authority in relation to fences as the supervisors of towns now or hereafter may have by the general laws of the State.

SEC. 5. The common council shall have power to order and contract for the opening, grading, repairing, and cleaning of the streets, alleys, public grounds, reservoirs, cisterns, gutters, and sidewalks within the city, and to direct and control the persons employed thereon.

SEC. 6. Whenever it shall be necessary to take private property for the purposes contemplated in the four (4) last sections, application shall be made on the part of the common council to the judge of the district court for Scott county, who shall appoint three (3) commissioners, who shall be freeholders and qualified electors of the city, one of whom at least shall be a resident of the ward in which is situated the property proposed to be taken, to view the premises and assess the damages which may be occasioned by the taking of such property, said commissioners shall be notified as soon as practicable by the city recorder to attend at his office on a day fixed by him, for the purpose of qualifying and entering upon their duties; and in case any such commissioner, upon being notified shall neglect or refuse to attend as aforesaid, he shall forfeit and pay to the city a fine not exceeding fifty dollars (\$50), and may be prosecuted therefor, before the city justice, as in the case of fines imposed for the violation of any city ordinance, by-law, or regulation, and application may be made to the district judge aforesaid, who shall fill the vacancy. The commissioners shall be sworn, by any officer authorized to administer oaths, to discharge their duties, as commissioners in the matter, with fidelity and impartiality, and to make due returns of their actions and doings to the common council, which said oaths shall be reduced to writing, and subscribed by said commissioners, and which, together with the affidavits of said commissioners, shall be filed with the city recorder. The said commissioners shall, with all reasonable dispatch, with the assistance of the city surveyor, cause a survey and plat of said improvements or grounds to be made, and filed with the city recorder, showing, as far as practicable, the land or parcels of property proposed to be taken, or which may be damaged thereby, and shall, thereupon, fix a time and place when they will meet to assess the damages to and for the property to be taken, or that may be damaged by the proposed improvement, such time shall be sufficient to give personal notice to the owners, or their agents, of the property to be taken or injured. The recorder shall, thereupon, immediately cause a notice, in writing, of the time, place, and purpose of the meeting of the commissioners, to be served on each of the owners, or their

agents, of said property, and proof of such service shall be made and filed with the report of said commissioners.

In case any of such owners are non-residents of the State, such notice shall be mailed to them at their residence, and if their residence is unknown and cannot be ascertained upon diligent inquiry, such fact must appear by affidavit, and in such case notice shall be given by publication in the city papers for the space of four (4) weeks, said notice to be published once in each week; if such owners are infants guardians must be appointed before the damages are assessed, and notice given to such guardian, and like notice shall be served upon lessees, mortgagees, and judgment creditors.

SEC. 7. At the time and place designated in said notice, the commissioners shall proceed to view the premises, and may hear any evidence offered by the parties interested, and may adjourn from day to day for such purpose, and when their said hearing shall be concluded, they shall determine and assess the damages to be paid to the owners of each parcel of property proposed to be taken or damaged by such improvement, and, in so doing, shall take into consideration the value of the property proposed to be taken, and such other damages as may be incidental thereto, and also the advantage which shall accrue to such owner or owners in making such improvement, and, at the same time, they shall determine what real estate will be benefitted by such improvement, whether in laying out, straightening, opening, widening, or altering any street, lane, alley, highway, or public grounds, and assess the damages, together with the costs of the proceedings on the real estate by them deemed benefitted, in proportion, as nearly as may be, to the benefits resulting to each separate lot or parcel of land, and they shall briefly describe the real estate upon which such assessments are made.

SEC. 8. If the damage to any person be greater than the benefit received, or if the benefit be greater than the damage, in either case, the said commissioners shall strike the balance, and carry the difference forward to another column, so that the assessment shall show what amount is to be paid for by the party in whose favor it shall be found, and the difference only shall in any case be collectable of them, or paid to them, or either of them.

SEC. 9. If there should be any building, in whole or in part, upon the land to be taken, the said commissioners shall, in such case, determine the amount of damages which should be paid to the owner or owners thereof, in case such buildings, or so much thereof as might be necessary, should be taken, and also determine and assess the damages which should be paid to such owner or owners in case he or they should elect to remove such building, and the damages in relation to buildings shall be assessed separately from the damages in relation to land upon which they are erected. If the land and buildings belong to different persons, or if the land be subject to lease, mortgage, or judgment, or either lien, or if there be an estate of less than the fee, the injury or damage done to such person, or interests respectively, may be

awarded them by the commissioners, less the benefit resulting to them by the improvements; said commissioners having ascertained and assessed the damages as aforesaid, shall make and file with the recorder a written report to the common council of their action in the premises, embracing a schedule of the assessment in each case, with a description of the lands and the names of the owners, if known to them, and also a statement of the costs of the proceedings upon such report being filed in the office of the city recorder, the council shall cause a notice to be published in the official paper of said city, to the effect that said assessment has been made and returned and filed, and that the same will be confirmed by the common council at a meeting then to be named in said notice, and shall be at least ten (10) days after publication thereof, unless objections are made in writing by persons interested in 'any lands' so assessed or to be taken. Any persons interested in buildings, in whole or in part, upon land to be taken, shall on or before the time specified in said notice, notify the council in writing of their election to remove said buildings (if they so elect,) according to the award of the commissioners. The common council, upon the day fixed for the consideration of such report, or at any subsequent meeting to be held, (the same may stand over or be referred,) shall have power in their discretion to confirm, revise, or amend the assessment, or to discontinue or postpone indefinitely the whole or any part of the proceedings, giving due consideration to the claims and objections interposed by the parties interested.

SEC. 10. In case the owner or owners of any buildings as aforesaid, shall have elected in the manner aforesaid to remove his or their buildings, he or they shall so remove, within ten (10) days from the confirmation of such report, or such further time as the council may allow for such purpose, and shall only be entitled to such damages as may be due after such removal. When such person or persons shall not have elected to remove such buildings, or so much thereof as may be necessary, and upon the payment or depositing of the amount of damages as hereafter stated, the said building may be taken and appropriated, sold, or disposed of in such manner as the council may direct, and the proceeds thereof shall belong to said city. When any known owner of the lands or tenements affected by the proceedings under this act shall be an infant, or labor under any legal disability, the judge of the district court or court commissioner of said county of Scott may, upon the application of the city attorney, or the mayor, or the party laboring under such disability, or his next friend, appoint a suitable person guardian for said person, which guardian shall stand in all respects for and in the place of the party whoever he represents in such proceedings.

SEC. 11. Any person feeling agrieved by such assessment, and who has filed objections to the assessments as hereinbefore provided, may, by notice in writing served on the city recorder or city attorney of said city, the original whereof, with proof of service, shall be filed in the office of the clerk of the district court in said Scott county, within twenty (20) days after the confirma-

tion of such report, and upon the execution of a bond, with one (1) or more sureties, to said city, to be approved by the judge of said district court, and file with the clerk of said court, may appeal from such assessment to the district court aforesaid, such appeal shall be tried by the court, or jury, or both, as in ordinary cases, but no pleadings shall be required, and the party appealing shall specify in the notice of appeal the grounds of objections to such assessment, and shall not be entitled to have any other objections than those specified considered, and a transcript of such report, certified by the city recorder, or the original thereof, shall be *prima facie* evidence of the facts therein stated, and that said assessment was regular and made in conformity to law, and that all proper notices were given, and proper proceedings had.

Provided, that no questions shall be considered on said appeal, except the jurisdiction of said commissioners and the amount of damages and assessment. The judgment of the district court thereon shall be final. In case of appeal, a copy of the assessment roll as confirmed as aforesaid shall, at the expense of the appellant, be filed in the office of the clerk of the district court by the city recorder within ten (10) days after such appeal is taken; such appeal shall be entered and brought on for trial and be governed in other respects as appeals from justices of the peace in civil actions.

SEC. 12. When said assessment is confirmed by the council, and when an appeal is taken as herein provided, a warrant under the seal of said city shall issue to the treasurer of said city for the collection of the same from the property assessed, signed by the mayor and city recorder; said warrant shall contain the name of the owner of the land upon which the assessment is made, if known, and a description of the property so assessed, together with the amount due.

SEC. 13. When such assessment shall have been confirmed, and no appeal taken therefrom, or if an appeal shall have been taken and judgment rendered thereon, the same shall be a lawful and sufficient condemnation of the land or property ordered to be appropriated, and the common council shall cause to be paid to the owner of the property so taken, the damage so determined therefor, or his agent, as soon as a sufficient amount therefor is collected from said assessment. *Provided*, that no private property shall be so taken or appropriated until said damages have been paid or tendered to the owners or their agents, or been set apart in said city treasury for that purpose.

SEC. 14. All warrants issued for the collection of special assessments shall be delivered by the city recorder to the treasurer of said city, taking his receipt therefor.

SEC. 15. Upon the receipt of any warrant for the collection of any special assessment, the city treasurer shall forthwith give notice, by publication in the official paper of said city for one week, that such warrant is in his hands for collection, describing its nature, and requesting all persons interested to make immediate payment at his office, and that in default thereof, the same will be

collected at the expense of the persons liable for the payment of such assessments.

SEC. 16. All assessments levied under the provisions of this chapter, shall be a permanent lien on the real estate upon which the same may be imposed, from the date of the warrant issued for the collection thereof. It shall be the duty of the city treasurer, upon receipt of said warrant, to forthwith deposit a certified copy thereof with the register of deeds of said county, whose duty it shall be to file the same in his office, for which filing he shall receive the sum of twenty-five (25) cents.

SEC. 17. If the assessment charged in any special assessment warrant, whether made by reason of the appropriation or condemnation of land or for any other improvements whatsoever under the provisions of this chapter, shall not be paid within twenty (20) days after the first publication of notice by the city treasurer, that he has received such warrant for collection, the assessment then remaining unpaid shall be collected with interest at the rate of twelve (12) per cent. per annum until the same shall be paid.

SEC. 18. It shall be the duty of the city treasurer, immediately after the expiration of twenty (20) days mentioned in the preceding section, to report to the district court of said county all assessment warrants for the collection of any assessment under the provisions of this chapter, which have been delivered to him, and then and there ask for judgment against the several lots and parcels of land described in such warrant, for the assessment, interest and costs respectively due thereon, and the court may at general or special term, or in vacation, proceed to order judgment thereon, and may make such orders in the premises as may be necessary to enforce said assessments and the collection thereof by the sale of said premises, and in all cases when a defense shall be interposed and a [new] trial had, in case such defense is not sustained, judgment shall be rendered against said property as hereinbefore provided, and the costs shall in all cases in said court abide the order the court may make therein.

SEC. 19. In all cases after judgment in the district court aforesaid, execution shall issue out of said court upon said judgment, signed by the clerk thereof, and under the seal of said court, directed to the city treasurer, for the amount of said judgment and costs, and the said city treasurer shall, unless the same is paid, proceed to sell the said property upon which said assessment is made in the same manner and upon the same notice as the sheriff in execution sales in civil action, and shall execute proper certificates of sale to the purchaser, which certificate shall be subscribed by the city treasurer and delivered to the purchaser, and shall contain the name of the purchaser, description of the premises sold, amount for which sold, and amount of judgment for which the same was sold, and the time when the right to redeem will expire, and any person may become a purchaser, whether personally interested in the premises or not.

SEC. 20. The right of redemption in all cases of sales for assessments shall exist to the owner, his heirs or assigns or

creditors, to the same extent and in the same manner as redemption from execution sales in civil actions, except that such redemption shall be made to the city treasurer of said city, and upon payment to him of the amount of said sale, with interest at twelve (12) per cent. per annum upon the amount of such sale, from the time of such sale until the time of redemption.

SEC. 21. The certificates of sale shall be recorded with the register of deeds of said county within twenty (20) days after sale. *Provided*, that upon the expiration of the redemption the said certificate shall operate as and shall convey the title to said premises to the purchaser, his heirs or assigns, in fee, and be *prima facie* evidence thereof, without any further act or deed. *Provided*, that no irregularity in any of said prior proceedings that do not affect the substantial rights of parties in interest, shall in any manner affect the title under said certificate, or otherwise, and no sale shall be set aside or held invalid upon any other grounds or reasons than would defeat a sale under an execution of real estate.

SEC. 22. This act shall take effect and be in force from and after its passage.

Approved March 3, 1877.

CHAPTER 124.

AN ACT TO AUTHORIZE HENRY VARNER, ADMINISTRATOR OF THE ESTATE OF WILLIAM VARNER, DECEASED, TO SELL AND CONVEY THE ESTATE OF SAID WILLIAM VARNER.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. That the said Henry Varner, administrator of the estate of the said William Varner, deceased, is hereby authorized and empowered to sell and convey the lands belonging to the estate of the said William Varner, in the manner, and upon such terms as the probate judge of the county of Scott may by order direct.

SEC. 2. The probate judge of the county of Scott is hereby authorized and empowered to designate the time, manner and conditions of said sale.

SEC. 3. The proceeds arising out of said sale of lands as aforesaid, to be by the said administrator apportioned equally among the heirs of the said William Varner, deceased; *Provided*, that the amount so ascertained to be due each of the minor heirs thereof, to be paid by the said administrator as soon as the same shall be